

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO**

DEBORAH CAIN,	:	CASE NO. 1:15 cv 589
Plaintiff,	:	JUDGE
v.	:	
STELLAR RECOVERY, INC.,	:	<u>NOTICE OF REMOVAL</u>
Defendant.	:	

Comes now Defendant Stellar Recovery, Inc. (“Defendant”), by and through its undersigned counsel, pursuant to the provisions of 28 U.S.C. §§ 1331, 1441 and 1446, and 15 U.S.C. §§ 1692 *et seq.*, appearing specially so as to preserve any and all defenses available under Rule 12 of the Federal Rules of Civil Procedure, and any and all other defenses under applicable law, and hereby gives notice of the removal of this action from the Court of Common Pleas of Warren County, Ohio to the United States District Court for the Southern District of Ohio, Cincinnati Division. In support of this Notice of Removal, Defendant states as follows:

INTRODUCTION

1. Plaintiff Deborah Cain (“Plaintiff”) commenced this action by filing a Complaint against Defendant in the Court of Common Pleas of Warren County, Ohio, Case No. 15 CV 87593, on or about August 10, 2015.

2. Plaintiff’s Complaint purports to set forth a claim against Defendant alleging violations of the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. §§ 1692 *et seq.*

3. This case is properly removable pursuant to 28 U.S.C. § 1441 because federal question jurisdiction is present. Section 1441 provides, in pertinent part:

Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.

28 U.S.C. § 1441(a).

FEDERAL QUESTION JURISDICTION

4. Federal district courts have “original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331. Removal jurisdiction based upon a federal question exists when a federal question is presented on the face of a plaintiff’s complaint. *See Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987).

5. This is a civil action arising under the Constitution, laws, or treaties of the United States, because Plaintiff is asserting a claim against Defendant based upon an alleged violation of the FDCPA, which is a federal statute.

6. Accordingly, Plaintiff’s FDCPA claim arises under the laws of the United States and could have been originally filed in this Court.

PROCEDURAL REQUIREMENTS

7. This case is a civil action within the meaning of the Acts of Congress relating to the removal of cases.

8. True and correct copies of “all process, pleadings, and orders” served on Defendant to date are attached hereto as Exhibit A in conformity with 28 U.S.C. § 1446(a).

9. Defendant was served with Plaintiff’s Complaint on or after August 17, 2015. Thirty (30) days have not yet expired since receipt of Plaintiff’s Complaint. Accordingly, this Notice of Removal is filed within the time frame set forth in 28 U.S.C. § 1446.

10. Defendant has heretofore sought no similar relief.

11. The United States District Court for the Southern District of Ohio, Cincinnati Division, is the court and division embracing the place where this action is pending in state court.

12. Contemporaneously with the filing of this Notice of Removal, Defendant has provided written notice of the same to the Clerk of Courts of Court of Common Pleas of Warren County, Ohio. Written notice of the filing of this Notice of Removal has also been served upon the Plaintiff.

13. Defendant will file its Answer to Plaintiff's Complaint with the Clerk of the United States District Court for the Southern District of Ohio.

14. Defendant reserves the right to supplement this Notice of Removal by adding any jurisdictional defenses which may independently support a basis for removal.

WHEREFORE, premises considered, Defendant prays that this Court take jurisdiction of this action and issue all necessary orders and process to remove this action from the Court of Common Pleas of Warren County, Ohio to the United States District Court for the Southern District of Ohio, Cincinnati Division.

Respectfully submitted,

SURDYK, DOWD & TURNER CO., L.P.A.

/s/David B. Shaver

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CERTIFICATE OF SERVICE

I hereby certify that on September 14, 2015, I mailed a copy of the foregoing by U.S. Mail
to the following:

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/s/David B. Shaver

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